

ST 01-0250-GIL 12/04/2001 CONSTRUCTION CONTRACTORS

Persons who permanently affix tangible personal property to real estate act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. See 86 Ill. Adm. Code 130.1940. (This is a GIL).

December 4, 2001

Dear Xxxxx:

This letter is in response to your letter dated August 30, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

PERSON at IDR in Springfield and PERSON2 have been unable to answer my question fully, and have referred me to Legal Services.

The subject is the differentiation between a manufactured home that remains personalty, and one that becomes real estate. I would appreciate a phone call from Legal Services to discuss my concerns.

I look forward to hearing from you.

The specific sales tax liability of transactions in which manufactured homes are sold depends upon whether the sellers act as retailers or construction contractors. Enclosed is a copy of 86 Ill. Adm. Code 130.2075 concerning the taxation of construction contractors. In general, persons act as construction contractors in Illinois when they take tangible personal property in the form of building materials and convert such tangible property to permanent real estate. See 86 Ill. Adm. Code 130.1940, enclosed. Dealers function as construction contractors when they sell manufactured homes or pre-fabricated buildings and as part of their duties under the sales contract permanently affix the homes or buildings to real estate such as by installing the buildings onto permanent foundations. Because Illinois tax law deems construction contractors to be the end-users of building materials (including modular or manufactured homes) that they take off the market and convert to permanent real estate, contractors incur a Use Tax liability on the cost price of materials they permanently affix to real estate. For these transactions labor charges for installation of the building are not taxable.

If Illinois sellers of modular or manufactured homes do not have contracts with the purchasers to permanently affix the homes to real estate, they do not act as construction contractors and do not

incur a Use Tax liability. Rather, they act as retailers in retail transactions and incur a Retailers' Occupation Tax liability on their total gross receipts with no deduction authorized for labor expense because this is a non-deductible cost of doing business. See the enclosed copy of 86 Ill. Adm. Code 130.410. Illinois retailers must collect the corresponding Use Tax from their purchasers unless an exemption applies (e.g., a sale for resale would occur if the purchaser buys the home for resale to a contractor). Dealers act as Illinois retailers if the homes being sold are located in Illinois at time of sale or if the purchase order is accepted in Illinois.

If contractors having contracts with customers to sell and permanently affix modular homes do not remit tax to Illinois registered suppliers, the contractors must self-assess and remit the Use Tax to the Department. Sellers of modular homes located outside Illinois who do not make Illinois retail sales may have sufficient contacts with Illinois to fall within the definition of a retailer maintaining a place of business in Illinois (see 86 Ill. Adm. Code 150.201(i), enclosed) thereby creating a Use Tax collection and remittance responsibility on gross receipts from sales to Illinois customers.

In a hypothetical example, if Business B purchases a modular home for \$50,000.00, affixes it to real estate in Illinois and sells it to customer C, B will incur a Use Tax liability on a base of \$50,000.00 no matter where the home is manufactured or where the sale of the home to B occurs. B must either pay the tax to an Illinois registered supplier or self-assess and pay the tax directly to the Department if the supplier is not registered to collect and remit Use Tax. B is not authorized under these circumstances to collect "tax" from customer C, since B is considered the end user of the modular home.

In another example, B is a business that is registered with the Department for sales tax purposes. B purchases a modular home and gives his supplier a resale certificate because he is purchasing the modular home for the purpose of resale. B then sells the home to C, who intends to affix it to real estate. B incurs Retailers' Occupation Tax liability on his gross receipts and must collect the corresponding Use Tax from customer C.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.